



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **05 January 2022** which reads as follows:*

**“G.R. No. 233467 (*People of the Philippines v. Bernardino Catamora y Vellecaria and Maria Rose Tolentino y Ablona*).** – This is an appeal<sup>1</sup> from the March 8, 2017 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07998 which found accused-appellants Bernardino Catamora y Vellecaria (Catamora) and Maria Rose Tolentino y Ablona (Tolentino; collectively, accused-appellants) guilty beyond reasonable doubt for violating Section 5 of the Article II, Republic Act (R.A.) No. 9165<sup>3</sup> otherwise known as the Comprehensive Dangerous Drugs Act, for Illegal Sale of Dangerous Drugs.

**The Antecedents**

Accused-appellants were charged with violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of the Information<sup>4</sup> provides:

On or about May 20, 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to SI Laura P. Nebato, a member of Philippine Drug Enforcement Agency, Metro Manila Regional Office, who acted as a poseur-buyer:

one (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 4.6047 grams;

<sup>1</sup> CA *rollo*, pp. 135-136. Notice of Appeal dated March 20, 2017.

<sup>2</sup> Id. at 117-126. Penned by Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of this Court), concurring.

<sup>3</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

<sup>4</sup> Records, pp. 1-2; and *rollo*, p. 3.

one (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 4.6663 grams;

one (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 4.5827 grams;

one (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 4.5853 grams; and

one (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 4.6709 grams;

with a total weight of 23.1099 grams, which after qualitative examination, were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the aforesaid law.

Contrary to law.<sup>5</sup>

When arraigned on July 25, 2011, duly assisted by counsel, accused-appellants both entered a plea of “not guilty” to the crime charged.<sup>6</sup> After pre-trial was terminated, trial ensued.

During trial, the prosecution presented the following witnesses: Special Investigator II Laura P. Nebato<sup>7</sup> (SI Nebato); Special Investigator II Jerme Almerino<sup>8</sup> (SI Almerino); and Chemist Severino P. Uy, Jr.<sup>9</sup> (Chemist Uy). The parties, on the other hand, stipulated on the testimonies of Evidence Custodian Majella Monasque (Monasque) and Intelligence Officer III Virgilio R. Castillo (IO3 Castillo), all of the Philippine Drug Enforcement Agency (PDEA). For their part, the defense offered the testimonies of accused-appellants who corroborated each other’s version of events.

The trial court summed up the events that transpired based on the testimonies of witnesses, documentary, and object evidence presented, *viz.*:

SI Nebato was assigned as Intel Operative of the PDEA Metro Manila Regional Office on May 20, 2011. At about 10:00 A.M. of that day a regular confidential informant (CI) came to their office and talked to their Team Leader IO Castillo. Although SI Nebato was present at that time the conversation between the CI and IO Castillo was not coherent to her. However, SI Almerino was beside IO Castillo and he heard that CI [told] IO Castillo that he had already gained the trust and confidence of @ Boy Mel

<sup>5</sup> Id. at 1-2; *rollo*, p. 3.

<sup>6</sup> Id. at 36; *id.*

<sup>7</sup> Also referred to as Senior Inspector II. CA Decision, *rollo*, p. 3.

<sup>8</sup> Also referred to as Investigation Agent I John Jerme, *id.*

<sup>9</sup> Also referred to as PCI Severino Uy, Jr., *id.*

and he can introduce to the latter any PDEA agent who would pose as buyer of illegal drugs. IO Castillo later called SI Nebato and briefed her about the report of the CI. IO Castillo then instructed SI Nebato to transact or make a deal with @Boy Mel who was supposedly engaged in the illegal drug trade particularly in Taguig City. Thus, SI Nebato instructed the CI to call @Boy Mel so that she could talk to him. Over the phone, SI Nebato identified herself as a potential buyer of *shabu* and she asked @Boy Mel if he can deliver the drug to her. @Boy Mel asked how many and SI Nebato answered about 25 grams. @Boy Mel replied that he can supply the quantity of *shabu* that SI Nebato wanted to buy for a price of Ph[P]125,000.00, to which SI Nebato agreed. Since @Boy Mel lived in Taguig City he and SI Nebato fixed the meeting in Market Market particularly in the Food Court near the parking area at 6:00 P.M. of that day. After the transaction was set up IO Castillo called the other members of the team and conducted a short briefing. Since it was SI Nebato who talked to @Boy Mel she was designated as the poseur buyer while SI Almerino was tasked to act as the back-up. As pre-arranged signal SI Nebato will light her cigarette to indicate that the transaction has been completed. After the briefing, SI Nebato retrieved two (2) pieces of Ph[P]500.00 bills from the evidence custodian to be used as buy-bust money and placed over the boodle money which was made of cut pieces of paper. The buy-bust team also prepared an Authority to Operate, Pre-Operation Report, and Certificate of Coordination to be submitted for coordination with their counterparts.

The buy-bust team left their office at about 1:00 P.M. in order for them to case/study the area and know the possible entrances and exits. SI Nebato together with some agents went directly to Market Market while another group of agents went to coordinate with the Southern Police District (SPD) but they later joined SI Nebato and the other agents in Market Market. Between 4:30 to 5:00 P.M. SI Nebato called @Boy Mel to let him know that she was already in Market Market. However, @Boy Mel told SI Nebato that he could not make it on time to Market Market and instead suggested that they meet at Jollibee along A. Luna St., Barangay San Joaquin, Pasig City at around 10:00 P.M. SI Nebato agreed to the new meeting place and time. She called IO Castillo to inform him of the change in the venue of the transaction and a team was tasked to coordinate with the Eastern Police District (EPD). The buy-bust team left Market Market at around 8:30 P.M. and arrived in Jollibee along A. Luna St., about 10:00 P.M. They familiarized themselves with the area and SI Nebato and the CI went to Jollibee and positioned themselves in front while the rest of the buy-bust team took up strategic positions. Already in position, SI Nebato called up @Boy Mel to tell him that she was already in Jollibee but @Boy Mel told her that he could still not make it. Over the phone SI Nebato made known her disgust because she had been asked to wait for a long time but @Boy Mel told her that he would instead send two (2) of his people and he then described their appearances to SI Nebato. However, the CI also knew the people being sent by @Boy Mel. After several minutes of waiting one (1) man wearing white t-shirt and maong pants and one (1) woman wearing gray t-shirt and maong pants who both fit the description given by @Boy Mel arrived and upon seeing them the CI told SI Nebato "*sila na yon*". The man and woman walked toward SI Nebato and the CI and introduced themselves as @Bernie and @Rose, who later turned out to be accused Bernardino Catamora (Catamora) and accused Maria Rose Tolentino (Tolentino). After short pleasantries, SI Nebato asked accused Catamora for

the drugs but the latter wanted to first see the money. SI Nebato declined to show the money because she told accused Catamora that she wanted to first see the drugs. SI Nebato was able to persuade accused Catamora to show the drugs and the latter handed to her a pack of Winston cigarette. SI Nebato opened the pack and saw inside the five (5) pieces of heat-sealed transparent plastic sachets containing white crystalline substance. The accused then demanded for the payment and SI Nebato handed to accused Tolentino a sando bag containing the genuine and boodle money. Thereafter, SI Nebato lighted her cigarette to indicate that the transaction has been completed.

While the CI and SI Nebato were in front of Jollibee, SI Almerino was around 10 to 15 (sic) away and he saw the two (2) accused when they approached the CI and SI Nebato. When SI Almerino saw SI Nebato light her cigarette he assumed that the transaction has been completed so he and his companions rushed toward the location of SI Nebato and they arrested the accused. Upon their arrest, the accused were informed of their violation and were advised of their constitutional rights.

After the accused were arrested and while at the scene, SI Nebato marked the Winston pack as A LPN 05-20-11 and the five (5) plastic sachets each containing white crystalline substance as A1 LPN 05-20-11, A2 LPN 05-20-11, A3 LPN 05-20-11, A4 LPN 05-20-11 and A5 LPN 05-20-11, which are Exhibits "P", "Q", "R", "S", and "T", respectively LPN refers to the initials of SI Nebato. While at the scene, photographs of SI Nebato marking the Winston pack and the plastic sachets in front of Jollibee were taken by an unidentified member of the buy-bust team. After the marking, IO Castillo turned over the confiscated items to the Investigator and the buy-bust team returned to their office. Upon arrival at the office, the PDEA agents sought the presence of Kagawad Jose Ruiz, Jr. of Barangay Pinyahan, Quezon City, who witnessed the conduct of the inventory and affixed his signature to the inventory of Seized Properties/Items. Photographs were also taken while SI Nebato prepared the inventory and while SI Almerino and Kagawad Ruiz signed it. After the inventory SI Nebato prepared a certification on the conduct of the buy-bust operation. The buy-bust team also prepared a request to its Laboratory Service for the conduct of laboratory examination on the confiscated items; request for physical examination of the accused and a booking sheet for each accused.

SI Nebato delivered the request for laboratory examination together with the confiscated items to the PDEA Laboratory Service, which were received by Chemist Chris Israel Cabatic at 1:35 A.M. (0135H) of the following day May 21, 2011. SI Nebato and SI Almerino also brought the accused to the Crime Laboratory of the Philippine National Police (PNP) in Camp Crame, Quezon City, for the physical examination and a Physical Examination report was made. From Camp Crame, the accused were returned to the PDEA office where they were detained and the buy-bust team prepared their case folder against the accused.

PDEA Chemist Cabatic conducted the qualitative examination and then prepared Chemistry Report No. PDEA-DD011-192 which stated his findings. The five (5) plastic sachets containing different amounts of white crystalline substance tested positive for methamphetamine hydrochloride, a dangerous drug. Chemist Cabatic marked the five (5) plastic sachets as A1, A2, A3, A4 and A5 with the assigned Chemistry Report No. PDEA-DD011-

192 and the date 21 May 2011. Chemist V. Severino P. Uy, Chief of the Examination Division, approved the chemistry report. After the completion of the laboratory examination, Chemist Cabatic turned over the drugs to Majella Monasque who is the evidence custodian of PDEA MMRO.

However, Chemist Cabatic resigned from PDEA on February 14, 2012. Upon motion of the prosecution, and without objection from the defense, the Court ordered the PDEA Director to cause the re-examination of the drugs subject of this case.

Severino P. Uy, Chief of the Examination Division of PDEA Laboratory Services conducted the re-examination of the drugs. For this purpose, Chemist Uy retrieved the drugs from Monasque, the PDEA MMRO Evidence Custodian. After receiving the Winston pack and five (5) transparent plastic sachets with markings A LPN 05-20-11, A1 LPN 05-20-11, A2 LPN 05-20-11, A3 LPN 05-20-11, A4 LPN 05-20-11 and A5 LPN 05-20-11 Chemist Uy performed the re-examination of the drugs consisting of the physical test, screening test and confirmatory test. The contents of the five (5) plastic sachets tested positive for methamphetamine hydrochloride. Chemist Uy reduced into writing the result of the re-examination in Chemistry Report No. PDEA-RDD012-005 and then sealed the plastic sachets and affixed on each of them the newly designated chemistry report number, PDEA-RDD012-005 the date of the re-examination 10-17-12 and his initials SPU. Chemist Uy conducted the re-examination in the afternoon of October 17, 2012 and on the same day returned the plastic sachets to the evidence custodian. He retrieved the plastic sachets from the evidence custodian at around 7:00 A.M. of October 18, 2012 before he proceeded to court and testify in this case.

On April 17, 2012, SI Nebato received an office order for her to attend the hearing of this case on April 19, 2012. At the date of the hearing SI Nebato brought the case folder together with the two (2) pieces Ph[P]500.00 bills which were used as buy-bust money. However, she was advised to return again on May 25, 2012 she looked for the case folder but she failed to locate it. It was only then that she recalled that she forgot the case folder inside the taxicab she took on her way home on April 19, 2012. Thus, SI Nebato executed an Affidavit of Loss dated July 4, 2012 where she narrated the circumstances of the loss of the case folder together with the two (2) pieces Ph[P]500.00 bills and reported the same on even date to the PNP Manila Police District Sampaloc Police Station which issued a Police Report.

Nevertheless, SI Nebato was able to photocopy the two (2) pieces Ph[P]500.00 bills and she knew that the photocopy is the same as the buy-bust money used in this case because she placed her initials LPN in the forehead of Ninoy Aquino.

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The accused denied that there was an entrapment operation against them where they were caught selling *shabu* to a PDEA agent. Rather, they corroborated each other's testimonies that they were lived-in partners

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<sup>10</sup> CA rollo, pp. 68-72.

residing at No. 94 N.P. Cruz St., Barangay Ususan, Taguig City. On May 20, 2011 the accused came from EDSA Crossing near Uniwide and were already on their way home. They alighted from a passenger jeepney in San Joaquin, Pasig City particularly in front of Jollibee where they were supposed to take another jeepney ride going to Taguig City. This was around 6:30 P.M. While thereat, accused Catamora excused himself to go to Mercury Drug which was nearby. While waiting for accused Catamora to return, two (2) persons suddenly held the arms of accused Tolentino and told her not to resist. She failed to call for help because the persons who held her threatened to hurt her if she was going to shout. On the other hand, accused Catamora saw accused Tolentino being held by the two (2) persons and after several minutes he was also already being held by two (2) other persons. Both accused were boarded in a vehicle and they were brought to Market Market where they stayed in the parking area for more or less two (2) hours. During that time the accused were being repeatedly asked by their captors, who turned out to be PDEA agents, about a certain @Boy Mel but they denied knowing anyone by that name. From Market Market the accused were brought to the PDEA office in Quezon City. The PDEA agents threatened them that a drug case will be filed against them if they still refused to disclose the whereabouts of @Boy Mel but the accused still denied knowing him. Their photographs and fingerprints were taken and then they were detained at the PDEA jail. The following day, May 21, 2011, they were brought to the Office of the City Prosecutor of Pasig City and a drugs case was filed against them.

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### **Ruling of the Regional Trial Court (RTC)**

In a Decision<sup>12</sup> dated November 2, 2015, the RTC found accused-appellants conspired in the commission of Illegal Delivery of Dangerous Drugs, a violation of Section 5, Article II, R.A. No. 9165.<sup>13</sup> The chain of custody was observed keeping the integrity and evidentiary value of the seized items intact.<sup>14</sup>

Accused-appellants' bare denial was deemed not credible. Denial is inherently a weak defense and cannot prevail over the positive testimony of the prosecution witnesses who are law enforcement agents that acted in the regular performance of their duties.<sup>15</sup>

The RTC decreed:

**WHEREFORE**, in accordance with the foregoing, the Court hereby renders judgment finding the accused Bernardino Catamora y Vellecario and Maria Rose Tolentino y Ablona **GUILTY** beyond reasonable doubt of illegal delivery of methamphetamine hydrochloride or *shabu*, a dangerous

<sup>11</sup> Id. at 73.

<sup>12</sup> Id at 66-87. Penned by Presiding Judge Achilles A. A. C. Bulautan.

<sup>13</sup> Id. at 75-81.

<sup>14</sup> Id. at 82-86.

<sup>15</sup> Id. at 86-87.

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drug, in violation of Section 5, Article II, of RA 9165, and they are hereby each meted the penalty of life imprisonment and to pay a fine in the amount of Ph[P]500,000.00 each.

The drugs subject of this case are forfeited in favor of the government to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for disposition in accordance with law.

**SO ORDERED.**<sup>16</sup> (Emphasis in the original)

Accused-appellants elevated the case to the CA via a Notice of Appeal<sup>17</sup> that was filed on November 23, 2015.

### **Ruling of the CA**

In a Decision<sup>18</sup> dated March 8, 2017, the CA denied the appeal and sustained accused-appellants' conviction for Illegal Delivery of Methamphetamine Hydrochloride, in violation of Section 5, Article II of R.A. No. 9165. The appellate court found no broken links in the chain of custody over the seized drugs. The prosecution was able to satisfactorily explain the movement of the subject drugs from the time of confiscation up to the time the same are offered as evidence in court.<sup>19</sup>

Accused-appellants failed to destroy the credibility of the prosecution witnesses as there was no proof that they were impelled by bad faith or ill motive.<sup>20</sup> What they offer are mere denials and alibis that have no probative weight over the positive testimonies of credible witnesses pointing at accused-appellants as the persons who transacted with them and who handed to them the dangerous drugs.<sup>21</sup>

The CA then disposed:

**WHEREFORE**, the appeal is **DENIED** and the Decision dated November 2, 2015 of the Regional Trial Court of Pasig City, Branch 154, in Criminal Case No. 17534-D-PSG is hereby **AFFIRMED**.

**SO ORDERED.**<sup>22</sup> (Emphasis in the original)

Accused-appellants maintain their innocence and filed the instant appeal<sup>23</sup> anchored on the following assignment of errors:

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<sup>16</sup> Id. at 31.  
<sup>17</sup> Id. at 32-33.  
<sup>18</sup> Id. at 117-127.  
<sup>19</sup> Id. at 124-125.  
<sup>20</sup> Id. at 125.  
<sup>21</sup> Id.  
<sup>22</sup> Id. at 26.  
<sup>23</sup> Id. at 135-136.

## I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE INTEGRITY AND IDENTITY OF THE SEIZED ITEMS BEYOND REASONABLE DOUBT.

## II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.<sup>24</sup>

The Court required the parties to submit their respective supplemental briefs if so desired.<sup>25</sup> Both parties waived the filing of the same and manifested that the respective briefs<sup>26</sup> filed before the CA already fully addressed the issues and arguments raised.<sup>27</sup>

Accused-appellants maintained that the sweeping guarantees presented by the prosecution as to the identity and integrity of the seized drugs will not secure a conviction. Whatever presumption of regularity as to the manner by which the police officers took and maintained custody of the seized items is negated by their non-compliance with Section 21.<sup>28</sup> The prosecution evidence failed to establish the unbroken chain of custody of the seized items from poseur-buyer, SI Nebato to IO3 Castillo, then turned over to the investigator, and until the seized evidence were inventoried at the PDEA Office, Quezon City.<sup>29</sup> To accused-appellants, the prosecution failed to establish with moral certainty their supposed guilt beyond reasonable doubt. The gaps in the chain of custody raised reasonable doubt on the authenticity of the *corpus delicti*, entitling them to an acquittal.<sup>30</sup>

On the other hand, the prosecution insists that the integrity and evidentiary value of the specimens were well-preserved.<sup>31</sup> A perfect chain of custody is not always the standard as it is almost always impossible to obtain an unbroken chain.<sup>32</sup>

Prosecution further argues that under the Implementing Rules and Regulations (IRR) of R.A. No. 9165, the custodial chain rule may not be rigorously applied under certain circumstances, provided the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. Hence, the supposed procedural infirmities imputed by

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<sup>24</sup> Id. at 52.

<sup>25</sup> *Rollo*, pp. 18-19. Minute Resolution dated October 11, 2017.

<sup>26</sup> *CA rollo*, pp. 52-63; and 93-113.

<sup>27</sup> Id. at 24-26; and 29-31.

<sup>28</sup> Id. at 58.

<sup>29</sup> Id. at 59.

<sup>30</sup> Id. at 62.

<sup>31</sup> Id. at 102.

<sup>32</sup> Id.

accused-appellants with respect to the inventory of the seized items did not, affect the prosecution of this case, render the arrest illegal, or the items seized from them inadmissible.<sup>33</sup>

### The Ruling of the Court

There is merit in the instant appeal.

In drug related cases, it is imperative that the *corpus delicti* or the drug subject of the crime charged is identified, proved, and adduced in court as evidence. The identity of said drug should be established with the same unwavering exactitude as that required to make a finding of guilt.<sup>34</sup> To preserve the identity and integrity of the *corpus delicti* and ensure a conviction, the chain of custody procedure provided in Section 21, Article II of R.A. No. 9165 must be complied with.<sup>35</sup>

Since the commission of the alleged crime happened on May 20, 2011, the prevailing law that provides for the required procedure was Section 21(1), Article II of R.A. No. 9165,<sup>36</sup> which prior to its amendment in 2014, states:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

The IRR of Section 21, Article II, R.A. No. 9165 for the aforementioned provision provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take

<sup>33</sup> Id. at 103-104.

<sup>34</sup> *People v. Tanes*, G.R. No. 240596, April 3, 2019.

<sup>35</sup> *People v. Serojales*, G.R. No. 243985, September 3, 2020.

<sup>36</sup> R.A. No. 9165 was amended by R.A. No. 10640 on July 15, 2014.

charge and custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for the disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is; or at the nearest police station or at the nearest office of the apprehending officer/team whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirement under justifiable grounds, as long as the integrity of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x (Emphasis supplied)

The chain of custody is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.<sup>37</sup>

To establish this custodial procedure, it is necessary to prove the following four (4) links in the proverbial chain: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>38</sup>

We will focus on the *first* link, the seizure and marking.

The law and the rules prevailing at the time of the commission of the crime requires that the marking, inventory and photography of the confiscated dangerous drugs be done immediately after seizure. It is further required that the physical inventory and photography of the seized items must be witnessed by a specific set of individuals: (1) the accused or his representative or counsel, (2) a representative of the DOJ, (3) a member of the media, and (4)

<sup>37</sup> Dangerous Drugs Board Regulation No. 1, Series of 2002, Section 1(b).

<sup>38</sup> *People v. Maralit*, 838 Phil. 191, 207 (2018).

an elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.<sup>39</sup>

Admittedly, the chain of custody should ideally be perfect and unbroken.<sup>40</sup> However, in recognition that compelling reasons may arise which will warrant a departure from the strict application of the rules, the IRR provides for a saving clause allowing minor deviations from the established protocols for as long as the integrity and evidentiary value of the *corpus delicti* is preserved. In other words, for the saving clause to apply, the following must be satisfactorily proven as a fact: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items is properly preserved.<sup>41</sup>

Here, the evidence of the prosecution showed that after accused-appellants were arrested, the designated arresting officer SI Nebato immediately marked the seized Winston pack as A LPN 05-20-11 and the five (5) plastic sachets each containing white crystalline substance as A1 LPN 05-20-11, A2 LPN 05-20-11, A3 LPN 05-20-11, A4 LPN 05-20-11 and A5 LPN 05-20-11. While marking the confiscated items, SI Nebato was being photographed by an unidentified member of the buy-bust team. The marked items were later turned-over to IO3 Castillo who in turn gave the confiscated contraband to the designated investigator, SI Almerino, before ordering the team to return to their office.

Upon arrival at the office, the PDEA agents sought the presence of Kagawad Jose Ruiz, Jr. of Barangay Pinyahan, Quezon City, who witnessed the conduct of the inventory and affixed his signature to the Inventory of Seized Properties/Items. Notably, only an elective official among the mandatory witnesses was present. The absence of the other insulating witnesses, namely a representative from the media and the DOJ, puts in doubt the proper preservation of the integrity and evidentiary value of the seized dangerous drugs.

The absence of the other statutory witnesses is a serious breach in the *first link* that ultimately rendered the entire custodial protocol broken. As a consequence, this break in the chain puts in question the very identity, integrity, and evidentiary value of the crime's *corpus delicti*. It creates a reasonable doubt on the guilt of the accused of the crime charged, necessitating an acquittal.

The presence of the statutory witnesses during inventory and photograph of the confiscated illegal drugs is vital as it safeguards the integrity of the evidence. In the absence of these persons, the possibility of switching,

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<sup>39</sup> R.A. No. 9165, Article II, Section 21(1); and the IRR of R.A. No. 9165, Article II, Section 21(a).

<sup>40</sup> *People v. Sawal*, G.R. No. 247971, February 17, 2020.

<sup>41</sup> *People v. Esteban*, G.R. No. 245253, September 7, 2020.

planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. Thus, an unexplained non-compliance with the requirement is fatal to the prosecution's case.<sup>42</sup>

In recent jurisprudence, the Court acquitted accused-appellants in view of the apprehending team's unexplained non-compliance with the mandatory *three(3)-witness rule* during the physical inventory and photograph of the seized or confiscated dangerous drugs.<sup>43</sup> The failure of the arresting officers to adduce justifiable reasons for the commission of the said procedural lapse led to the conclusion that the apprehending team deliberately disregarded the legal safeguards under the law.<sup>44</sup> This blatant disregard of the requirements of Section 21, R.A. No. 9165 constitutes an irregularity in the performance of official duties which cannot prevail over the presumption of innocence guaranteed by the Constitution.

An accused shall be presumed innocent until the contrary is proved.<sup>45</sup> The prosecution bears the heavy burden to overcome the same. If the prosecution fails to discharge the burden, an acquittal becomes the proper recourse.

In conclusion, we find that the guilt of accused-appellants has not been proven beyond reasonable doubt and perforce must be acquitted.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07998 is hereby **REVERSED** and **SET ASIDE**. Accused-appellants **Bernardino Catamora y Vellecaria** and **Maria Rose Tolentino y Ablona** are **ACQUITTED** of the crime charged against them, on the ground of reasonable doubt and are **ORDERED** to be **IMMEDIATELY RELEASED**, unless they are being lawfully held in custody for any other reason.

The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

Let entry of judgment be issued immediately.

**SO ORDERED.**"(Hernando, J., no part due to his prior participation in the Court of Appeals; Lopez, M.V., J., designated additional Member per Raffle dated November 29, 2021.)

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<sup>42</sup> *People v. Nocum*, G.R. No. 239905, January 20, 2021.

<sup>43</sup> *People v. Garcia*, G.R. No. 230983, September 4, 2019; *People v. Vistro*, G.R. No. 225744, March 14, 2019; *People v. Rojas*, 836 Phil 757, 770-772 (2018). *People v. Seguinte*, 833 Phil. 811, 819-821 (2018).

<sup>44</sup> *Tolentino v. People*, G.R. No. 227217, February 12, 2020.

<sup>45</sup> 1987 Constitution, Article III, Section 14(2).

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court *TC*  
13 JUL 2022

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Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

MARIA ROSE TOLENTINO y ABLONA (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

THE SUPERINTENDENT (x)  
New Bilibid Prison  
1770 Muntinlupa City

THE SUPERINTENDENT (x)  
Correctional Institution for Women  
1550 Mandaluyong City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 154  
1600 Pasig City  
(Crim. Case No. 17534-D-PSG)

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